

Casualty Insurance Policy Form Review Standards (May 2007)

I. M.G.L. Ch. 175, §22A: Combination of Hazards

This policy combines coverage against loss or damage caused by a combination of hazards (i.e. hazards specified in more than one of the clauses of section forty-seven).

_____ Yes _____ No

If yes, please review and complete the following:

_____ This policy does not contain coverage of or references to motor vehicle insurance subject to M.G.L. Ch. 175, §113A.

_____ This policy does not contain coverage of or reference to life and health insurance subject to M.G.L. Ch. 175, §§108, 132.

II. M.G.L. Ch. 175, § 111A: Combination Policies/Liability Insurance

A. Is the policy a single policy issued by two (2) or more companies for insurance against loss or damage on account of the hazards specified in the 3rd clause to airplanes, seaplanes, dirigibles or other aircraft and motor vehicles other than motor boats; or in subdivisions (a) and (b) of the 6th clause of section 47 (legal liability plan loss or damage on account of injury or death or damage to property of another excluding deliberate or intended acts);

_____ Yes _____ No

If yes, then please review and complete the following:

_____ The policy should be executed on behalf of the companies by a duly authorized person and the corporate name of each of the companies shall be affixed to the policy. M.G.L. Ch. 175, §111A

The policy shall contain the following:

_____ A provision specifying the percentage of any loss or claim for which each company shall be liable.

_____ A provision that any notice, sworn statement or proof of loss which may be required by the provisions of said policy may be rendered, made or given to any one of such companies or to a duly authorized agent of any one of the such

companies, and that such notice, sworn statement or proof of loss so rendered, made, or given shall be valid and binding as to all of such companies.

_____ A provision that, in any action or suit under the policy, service of process may be made on any one of such companies and that such service shall be deemed valid and binding service upon all of such companies. M.G.L. Ch. 175, §102A(3).

_____ A provision that upon cancellation by any company of its liability under the policy, the return premium, if any, to be paid or tendered to the insured shall be based on such proportion of the total premium stated in the policy as the amount insured by the canceling company bears to the total amount insured under the policy. M.G.L. Ch. 175, §102A(5).

_____ In the event a company or filing or rating organization eliminates or reduces certain coverages, conditions, or definitions in such policies issued under this section [G.L. ch. 175, §111A], the company must attach to each of such policy a printed notice setting forth what coverages, conditions or definitions have been eliminated or reduced. If explanations of such reduced or eliminated coverages are not contained in such a printed notice attached to such policy, then such coverages, conditions or definitions shall remain in full force and effect without such reductions and eliminations. M.G.L. Ch. 175, §111A.

_____ We hereby certify that such notice is attached, Policy Form Number _____ Page _____, or has previously been filed and approved for use with the Division of Insurance, policy form number _____ approved effective _____.

Please note that two or more companies may NOT issue a single motor vehicle liability policy as defined in M.G.L. ch. 90, §34A.

B. Is the policy issued by two or more companies against legal liability for loss or damage to person or property caused by nuclear energy hazards?

_____ Yes

_____ No

If yes, please review and complete the following:

_____ The policy may be executed on behalf of the companies by a duly authorized person and need not be countersigned by a resident agent of more than one of such companies in the commonwealth. M.G.L. Ch. 175, §111A

_____ The policy need not be headed by the corporate names of all the companies provided the corporate name of each company is affixed.

_____ The policy shall plainly specify the percentage of any loss or claim for which each such company shall be liable.

_____ The policy shall include a provision that any notice, sworn statement or proof of loss which may be required by the provisions of the policy may be rendered, made or given to any one of such companies or to the agent named in the policy as he duly authorized agent of the companies, and that such notice, sworn statement or proof of loss so rendered, made or given shall be valid and binding as to all of such companies.

_____ A provision that, in any action or suit under the policy, service of process may be made on any one of such companies and that such service shall be deemed valid and binding service upon all of such companies. M.G.L. Ch. 175, §102A(3).

C. Is one or more of the companies assuming risk a mutual company?

_____ Yes _____ No

If yes, please review and complete the following:

_____ The policy shall provide that the contingent mutual liability of the insured to each company shall be based on such proportion of the total premium as the amount insured by each such company bears to the total insured under the policy. M.G.L. Ch. 175, §102A(4).

_____ The person insured under such a policy shall be deemed to be a member of each company while the policy is in force and entitled to one vote at the meetings of each company. M.G.L. Ch. 175, §111B, M.G.L. Ch. 175, §102B, second paragraph.

_____ The policy [or filing] shall contain the notice, endorsement, and statement required by M.G.L. Ch. 175, §§76, 80, 81. M.G.L. Ch. 175, §102B, third paragraph.

_____ Every policyholder of a domestic company and every policy in this commonwealth of a foreign company shall be notified, at his last known address, within six months after the expiration of his policy, of the amount of any dividend declared and payable thereon, unless in the meantime such dividend has been paid in cash or applied in payment of the premium on the renewal of the policy. M.G.L. Ch. 175, §80.

_____ The policy shall fix contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds, which liability shall not be less than an amount equal to and in addition to the cash premium written in the policy. The total amount of the liability of the policyholder shall be

plainly and legibly stated upon the filing-back of each policy. M.G.L. Ch. 175, §81.

_____ Every policyholder shall be notified of the time and place of holding its meetings by a written notice or on the filing-back of each policy, receipt or certificate of renewal in accordance with the form prescribed in M.G.L. Ch.. 175, §76.

_____ The application shall, insofar as it materially relates to the obligations stated in the contract, be considered a part of the contract. The application shall require from the applicant sufficient information relative to the insured property to determine the actual cash value and the actual ownership of the property. (Not applicable to coverage of owner occupied dwellings of four units or less, to buildings owned and insured by the commonwealth or its political subdivisions, to highly protected risks, to non-income producing seasonal dwellings, or to builders risk policies.) M.G.L. ch. 175, §§98, 111B.

_____ The policy shall provide for a policyholder's liability to pay his/her proportional part of any assessment laid by the company. M.G.L. ch.175, §§§83, 93, 111B.

III. M.G.L. Ch. 175, § 111C: Medical Pay Provisions

A policy of insurance issued under subdivision (b) of clause 6th of section 47 insuring any person against legal liability for loss or damage on account of the injury or death of any other person **may** also insure, or an endorsement or rider may be attached thereto to insure, irrespective of any such legal liability, any person, including the named insured under the policy, in respect to:

_____ (1) the reasonable expense of medical, surgical, x-ray, dental (including prosthetic devices), ambulance, hospital, professional nursing and funeral expenses; and

_____ (2), in the case of a motor vehicle liability policy as defined in M.G.L. Ch. 90 s. 34A, disability benefits on account of injury and death benefits to dependents, beneficiaries or personal representatives on account of death resulting from the ownership, maintenance or use of motor vehicles.

IV. M.G.L. Ch. 175, § 111E: Professional liability policies

Does this filing entail coverage for professional liability?

_____ Yes _____ No

If yes, please review and complete the following:

With the prior written approval of the Commissioner of insurance, a group liability insurance policy may be issued by a company affording professional liability coverage for bodily injury and property damage including wanton and reckless assault and battery, but excluding willful or intentional assault and battery.

_____The policy must insure members of an association formed under the authority of M.G.L Ch. 180 (Corporations for Charitable and Certain Other Purposes) consisting of at least 500 members of whom not less than 75 % are insured thereunder.

V. M.G.L. Ch. 175, § 111H: Requirements applicable to Insurance on Liability for Injury from Exposure to Dangerous Levels of Lead in Dwelling Units
211 CMR 131.00: Coverage of injuries resulting from lead exposure

Does the policy provide coverage for a residential property?

_____ Yes _____ No

If yes, please review and complete the following:

_____ (a) Any liability insurance policy which provides coverage to the owner of any premises for which a letter of interim control or letter of full compliance is in effect, in accordance with M.G.L. c. 111, s. 197 (lead), shall cover claims for injury or damage resulting from exposure to dangerous levels of lead in dwelling units, as long as said injury or damage is not the result of gross or willful negligence.

_____ (b) Any liability insurance policy which provides coverage to the owner of any premises not in compliance with M.G.L. c. 111, s. 197 (lead) shall be endorsed to add coverage for injury or damage resulting from exposure to dangerous levels of lead in dwelling units occurring after the effective date of such endorsement when and if the owner of said premises obtains and maintains a letter of interim control or letter of full compliance.

_____ (c) any new owner of any premises who has taken title as the result of a bona fide transaction and who has also complied with the requirements of subsection (d) of M.G.L. c. 111, s. 199 (lead), shall be covered from the date such owner took title to the premises.

_____ (d) Companies which elect to offer a liability insurance policy for any premise for which the owner has not obtained a letter of interim control or letter of full compliance shall also make available for that premise additional coverage for injury or damage resulting from exposure to dangerous levels of lead, provided that in the case of an owner occupied single family premise any such coverage for injury or damage resulting from exposure to dangerous levels of lead shall be provided as part of the policy and not offered as additional coverage

excepting that such coverage will not apply to claims made by persons insured under the policy.

_____ When any liability insurance policy which an insurer has elected to offer provides coverage to the owner of any premises for which a letter of interim control or letter of full compliance is in effect, in accordance with M.G.L. c. 111, § 197, such policy shall provide coverage for injury or damage which results from exposure to dangerous levels of lead in dwelling units, and which occurs during the policy period, as long as said injury or damage is not the result of gross or willful negligence. 211 CMR 131.04

_____ Coverage provided in accordance with this section [211 CMR 131.04] will be effective from the date of policy inception if the letter of compliance or letter of interim control is effective on or before such later date.

_____ Except as provided in 211 CMR 131.06, when any liability insurance policy which an insurer has elected to offer provides coverage to the owner of any premises for which there is no letter of interim control or length of full compliance in accordance with M.G.L. Ch. 111, § 197, the insurer shall endorse or otherwise modify the policy to provide coverage for injury or damage which results from exposure to dangerous levels of lead in dwelling units, and which occurs on or after the date the endorsement or other contractual modification is effective, if and when the owner of such premises obtains and maintains a letter of interim control or letter of compliance. 211 CMR 131.05

_____ Coverage provided to any dwelling unit in accordance with this section shall be effective on any dwelling unit on the date that any letter of interim control or letter of compliance applicable to such unit is effective.

_____ Notwithstanding the requirements and limitations of 211 CMR 131.05, a new owner of premises who has taken title as a result of a bona fide transaction and who has complied with the requirements of M.G.L. Ch. 111, § 199(d) applicable to new owners, including coming into conformance with M.G.L. Ch. 111, §§ 189A through 199B within 90 days after becoming the owner of the premises, shall be covered for injury or damage which results from exposure to dangerous levels of lead in dwelling units, and which occurs during the policy period of any policy of liability insurance an insurer has elected to provide to such owner. (211 CMR 131.06)

_____ Coverage shall apply from the date such owner took title to the premises, or from the effective date of the policy, if the owner did not obtain insurance until after the date of taking title.

_____ Lead poisoning liability coverage provided in accordance with 211 CMR 131.04, 131.05 and 131.06 shall not be subject to special limits not applicable to other liability claims under such a policy. (211 CMR 131.07)

_____Lead poisoning liability coverage provided in accordance with 211 CMR 131.04, 131.05 and 131.06 shall be provided to any dwelling unit for which a letter of interim control or letter of compliance is in effect, regardless of whether such letters are in effect with respect to other units in the same building. Id.

_____When coverage is provided in accordance with the above referenced sections on any unit or portion of premises for which a letter of compliance or letter of interim control is in effect; such coverage will apply only to lead poisoning liability claims arising from the portion of the premises covered by such a letter.

An insurer may require an insured to provide a copy of any letter of compliance or letter of interim control that is in effect with respect to any premises or portion of premises that qualifies for coverage.

Companies that offer a liability insurance policy for any premises for which the owner has not obtained a letter of interim control or letter of compliance may exclude coverage for injury or damage which results from exposure to dangerous levels of lead in dwelling units. However, certain buybacks must be offered to the insured.

_____Insurers shall offer such buyback coverage with separate limits of at least \$100,000 per occurrence for personal lines insurance on residential premises and at least \$300,000 per occurrence for commercial lines insurance on residential premises.

_____Notwithstanding the foregoing, if the general liability per occurrence limit of an insured's policy is less than \$100,000 in the case of a personal lines policy, or less than \$300,000 in the case of a commercial lines policy, then the insurer may provide lead poisoning liability coverage in accordance with 211 CMR 131.08 with a per occurrence limit of not less than the policy's general liability per occurrence limit.

_____The foregoing separate minimum per occurrence limits shall not increase any aggregate limit or policy limit of liability of any policy of insurance, which includes buyback coverage provided in accordance with 211 CMR 131.08.

_____The limits of a policy written in accordance with 211 CMR 131.08 apply regardless of the number of units covered by such insurance.

_____Buyback coverage elected within 30 days of receipt of an offer of such coverage shall be deemed effective on the inception date of the policy.

_____Buyback coverage elected after 30 days of receipt of an offer shall be effective on the date of the request by the insured, unless otherwise agreed by the insured and the insurer.

_____Notwithstanding any of the other provisions of 211 CMR 131.00, any liability insurance policy covering owner-occupied single family premises

shall provide coverage for injury or damage resulting from exposure to dangerous levels of lead in dwelling units, except that such a policy's lead poisoning liability coverage will not apply to claims made by persons who are insureds under that policy. 211 CMR 131.09

The exclusion and buyback requirement of 211 CMR 131.08 does not apply to owner-occupied single family premises.

211 CMR 131.10: Rates for Lead Liability

_____(1) Rates for insurance under 211 CMR 131.00 must be filed with the Commissioner, and are subject to the requirements of M.G.L. Ch. 175A.

_____(2) Loss costs for insurance be filed with the Commissioner and must satisfy the requirements of **SRB Bulletin 90-05** (Insurance Rating Organizations: Implementation of Loss Cost Filing Procedures) or any superseding bulletin, rule, or regulation regarding loss costs.

_____(3) Filings under 211 CMR 131.00 must include full justification for proposed rates, loss costs, or buyback coverage, and must be accompanied by all actuarial data used in their formulation, such as:

_____(a) Historical exposure and claims data (both in number and in dollar amount, paid as well as incurred), including information relative to claims closed both with and without indemnity payments, for the previous 5 years.

_____(b) Projected claims costs underlying the proposed loss costs, along with supporting documentation.

_____(c) A narrative explanation of actuarial assumptions used in developing the loss costs.

_____(4) Each rate or loss cost filing must be made at least 15 days prior to its proposed effective date. The Commissioner may delay the effective date for 30 additional days if she determines the delay is necessary to properly examine the filing or to request any supporting information or to permit a hearing on the filing.

Disclosure Requirements for Lead Liability

_____(1) Insurers shall provide to insureds or prospective insureds disclosure notices summarizing the coverage which they provide or make available for lead poisoning liability insurance with respect to all policies issued or renewed.
211 CMR 131.13

The Disclosure notices shall indicate:

_____(a) whether the policy is intended to exclude coverage for injury or damage which results from exposure to dangerous levels of lead in dwelling units;

_____ (b) that such exclusions may not be applied to premises to which a letter of compliance or letter of interim control is in effect;

_____ (c) that buyback coverage is available for an additional charge in the event that the insurer intends to apply such an exclusion to premises for which no letter of compliance or letter of interim control is in effect;

_____ (d) that buyback coverage elected within 30 days of receipt of an offer of such coverage will be deemed effective on the inception date of the policy, and that buyback coverage elected after 30 days of receipt of an offer will be effective on the date of the request by the insured, unless otherwise agreed by the insured and the insurer;

_____ (e) that if the owner of residential premises brings his or her premises into compliance during the term of the policy as stated in 211CMR 131.05, coverage will be added for lead poisoning liability arising from exposure which occurs on and after the date the added coverage is effective;

_____ (f) that a new owner brings his or her premises into compliance in the manner indicated in 211 CMR 131.06, the new owner shall be provided coverage back to the date he or she took title, or from the effective date of the policy, if the owner did not obtain insurance unit after the date of taking title;

_____ (g) that, for an insured to qualify for coverage provided in accordance with 211 CMR 131.04, 131.05 and 131.06, an insurer may require an insured to provide a copy of any letter of compliance or interim control that is in effect with respect to any premises or portion of premises for which such insurance is sought;

_____ (h) that lead poisoning liability coverage provided in accordance with 211 CMR 131.04, 131.05 and 131.06 shall be provided to any dwelling unit for which a letter of interim control or letter of compliance is in effect, regardless of whether such letters are in effect with respect to other units in the same building;

_____ (i) that, when lead poisoning liability coverage is provided in accordance with 211 CMR 131.04, 131.05 and 131.06 on any unit or portion of premises for which a letter of compliance or letter of interim control is in effect, such coverage will apply only to lead poisoning liability claims arising from the portion of the premises covered by such a letter; and

_____ (j) the limits of the lead poisoning liability coverage being provided or offered.

Additional Disclosures

_____ At the same time that insurers provide to insureds the disclosure notice specified above, insurers shall also provide an additional disclosure notice

describing the requirements of M.G.L. Ch.111, sections 189A through 199B (the Massachusetts Lead Law).

Such notice is available from the Division of Insurance, which shall determine its form and content.

VI. M.G.L. Ch. 175, § 112A: Liquor Liability Coverage

_____ Liquor legal liability insurance shall provide insurance coverage against the legal liability of the insured.

_____ It shall also cover loss, damage or expense incident to a claim arising out of death or injury to any person as the result of negligence in the distribution, sale, or serving of alcohol by a licensee or an employee, or agent thereof, or any other person or entity to whom a policy of liquor legal liability insurance has been issued.

_____ No payment shall be made under the policy where the cause of action giving rise to a claim is the result of the actions of an intoxicated person which occurred off of, and away from, the premises of the licensee excluding, however, those causes of action arising out of the intoxicated individual's operation of a motor vehicle.

VII. Additional Governing Provisions:

Is the proposed policy, endorsement, or rule for stand-alone General Liability?

_____ Yes _____ No

If yes, please review and complete the following:

Claims Made Policies for General Liability

The Division of Insurance does not permit claims made policies for “stand alone” comprehensive general liability coverage. This type of coverage is only permitted when accompanying medical malpractice insurance as long as the medical malpractice insurance is not, in the Division’s opinion, merely incidental.

_____ We hereby certify that our proposed General Liability form, endorsement, or rule do not contain any “claims made” provisions.

Defense within Limits for General Liability

The Division of Insurance does not permit “defense within limits” provisions on comprehensive general liability products.

_____ We hereby certify that our proposed General Liability form, endorsement, or rule does not contain any “defense within limits” provisions.

Unfair and Deceptive Trade Practices

Any filing not in compliance with the above referenced requirements may be deemed to be in violation of the provisions of Chapter 176D of the Massachusetts General Laws.

_____ We hereby certify that the provisions set forth in this filing do not entail any intentional unfair and deceptive trade practices. Furthermore, we understand that we are subject to the penalties associated with practices that are in clear violation of this statute.

Dog/Animal Bite Exclusions:

The Division does not allow companies to use blanket dog bite exclusions in a homeowners', personal liability or multi peril policies. Dog bite exclusions are allowed only as to certain breeds and/or dogs with a prior history of biting. The company should specify in the endorsement the breeds they deem aggressive. If a company is seeking to exclude a particular dog, not within an aggressive breed, it must specify and address, in the endorsement, the facts that support their assessment. All such endorsements are subject to review and approval by the Division.